

REMARKS

In the Office Action of April 27, 2004, claims 12, 14-16 and 18-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ross et al. (U.S. Patent No. 5,318,543).

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross.

Claims 1-4 and 8-10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross in view of Rudnick et al. (U.S. Patent No. 6,039,183) and Harrison (U.S. Patent No. 5,392,918).

Claims 5-7 and 13 were indicated as allowed in the Office Action of April 27, 2004.

Claims 11 and 21 were objected to as being dependent upon a rejected base claim, but allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. In the present amendment, Applicants have rewritten claims 11 and 21 so that they are independent claims that include the subject matter of the claims from which they depend before any of the current amendments to claims 1 and 12. As such, Applicants respectfully submit that claims 11 and 21 are in condition for allowance.

Applicants respectfully submit that claim 1 defines over the combination of Ross, Rudnick and Harrison. Respectfully, the combination of references does not disclose a kit adapted to be utilized in a “push” PEG procedure that includes a container in which at least one accessory article is retained in the interior space

thereof such that the container completely surrounds the accessory article.

Support for this claim amendment may be found in at least Figs. 1 and 6 of the drawings in Applicants' application.

Harrison discloses a tray that includes a holder 26 into which a guide-wire is positioned (see Harrison at column 4, lines 14-20). Holder 26 includes an outlet passageway or port 48 through which the distal end of the guide-wire 22E extends (see Harrison at column 4, lines 35-37). Port 48 allows for the guide-wire 22E to be threaded out of holder 26 and then after the performance of a surgical procedure reinserted (see Harrison at column, 4 lines 47-57). Fig. 7 shows the guide-wire 22E retained on both the inside and outside of holder 26. Reinsertion of the guide-wire 22E into holder 26 through port 28 is of "considerable importance" because it reduces the risk of contaminating others with a contaminated guide-wire (see Harrison at column 4, lines 57-62).

It is therefore the case that the guide-wire 22E in Harrison is retained both on the inside and outside of holder 26. In fact, Harrison explicitly teaches against having the guide-wire 22E retained in the holder 26 so that holder 26 completely surrounds the guide-wire 22E because doing so would require the removal of port 48 and eliminate the ability of the guide-wire 22E to be threaded out of holder 26 and then reinserted. This feature is described as being of "considerable importance" because it reduces the chances of contaminating one with a blood-coated guide-wire. As such, reconfiguring holder 26 in Harrison so that an article is retained in the interior space of holder 26 so that holder 26 completely surrounds the accessory article would go entirely against the point of

the reference.

Likewise, the blister insert 24 in Rudnick is configured such that the aortic graft 10 is seated in a depression 48 located entirely on the outside of the blister insert 24. In fact, no portion of the aortic graft 10 or any other article is placed inside of the blister insert 24. The blister insert 24 is entirely configured for holding an object on the outside thereof.

Incorporation of holder 26 of Harrison and the blister insert 24 of Rudnick into the instrumentation kit of Ross would result in a combined device that has a container configured for holding objects on the outside of the container. To establish *prima facie* obviousness, all of the claim limitations must be taught or suggested by the prior art. Here, a container in which at least one accessory article is retained in the interior space thereof such that the container completely surrounds the accessory article is not taught or suggested by the combination of Harrison, Rudnick and Ross. Modification of the sealed pouch in Ross upon incorporation of the holder 26 of Harrison and the blister insert 24 of Rudnick would produce a resulting device that includes a container configured for holding objects on the outside of the container. As such, Applicants respectfully submit that claim 1 defines over the combination of Harrison, Rudnick, and Ross and is in condition for allowance. Further, all claims that depend from claim 1 (claims 2-4 and 8-10) are also in condition for allowance since their rejections are made moot due to the allowance of claim 1.

Applicants respectfully submit that claim 12 defines over Ross. Respectfully, Ross does not disclose a surgical kit for use in performing a PEG

“push” type procedure that includes a tray with a second and third planer surface that are vertically displaced from one another. Support for this claim amendment may be found on at least page 6, lines 19-25 of Applicants’ application.

Ross discloses a first planar surface that has recesses for holding items 17 and 27, a second planar surface that has a recess for holding item 23, and a third planar surface that has a recess for holding items 14, 21, 22, and 24. While the first planar surface is vertically displaced from the second and third planar surfaces, the second and third planar surfaces in Ross are not vertically displaced from one another.

The tray called for in claim 12 of Applicants’ application includes a first planar surface and a second planar surface that are vertically displaced from one another. Claim 12 also calls for a third planar surface that is vertically displaced from both the first planar surface and the second planar surface. As such, claim 12 calls for a different structure than the kit disclosed in Ross, and there is no motivation present for one of ordinary skill in the art to modify the kit of Ross in order to arrive at the structure called for in claim 12 of Applicants’ application.

As such, Applicants respectfully submit that claim 12 defines over Ross and is in condition for allowance. Further, all claims that depend from claim 12 (claims 14-20) are also in condition for allowance since their rejections are moot due to the allowance of claim 12.

Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance. Favorable action thereon is

respectfully requested. The Examiner is encouraged to contact the undersigned at the Examiner's convenience to resolve any remaining issues.

Respectfully submitted,

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